

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESUS ALBIZU,) 1:02-cv-5875-AWI-SMS
Plaintiff,)
v.) ORDER RE: FINDINGS AND
CLYDE A. STROHL, et al.,) RECOMMENDATIONS TO GRANT DEFAULT
Defendants.) JUDGMENT (DOC. 141)
) ORDER DIRECTING THE CLERK TO
) ENTER JUDGMENT FOR PLAINTIFF AND
) AGAINST DEFENDANTS WESLEY
) AMUNDSON AND AMUNDSON AND
) ASSOCIATES

Plaintiff is proceeding with counsel with a civil action. Pending before the Court is Plaintiff's application for default judgment against Defendants Wesley E. Amundson and Amundson and Associates. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rule 72-302(c)(19).

On November 14, 2005, the Magistrate Judge filed findings and a recommendation that Plaintiff's application for default judgment be granted. The findings and recommendation were served on all parties on November 14, 2005 and contained notice that any objections to the findings and recommendations were to be filed within thirty (30) days of the date of service of the order.

1 Defendants filed on December 7, 2005, a document entitled
2 "NOTICE OF MOTION AND MOTION TO REQUEST AN APPEAL TO THE FINDINGS
3 AND RECOMMENDATIONS RE: WESLEY E. AMUNDSON AND AMUNDSON AND
4 ASSOCIATES DATED NOVEMBER 10, 2005." Defendants did not file any
5 objections or other documents in response to the findings and
6 recommendations.

7 The docket reflects that Defendants filed what purported to
8 be a notice of appeal from the findings and recommendations.
9 Although the filing of a notice of appeal generally divests a
10 district court of jurisdiction to determine the "substantial
11 rights" at issue in an action during the pendency of the appeal,
12 Pyrodyne Corp. v. Pyrotronics Corp., 847 F. 2d 1398, 1403 (9th
13 Cir. 1988), an exception to this rule exists where a deficiency
14 in the notice of appeal "is clear to the district court," Ruby v.
15 Secretary of the United States Navy, 365 F. 2d 385, 389 (9th Cir.
16 1966). In such a case the district court may proceed with the
17 case "knowing that it has not been deprived of jurisdiction."
18 Id. Because it is completely "clear to the district court" that
19 no appeal lies from a Magistrate Judge's Findings and
20 Recommendations, this Court knows "that it has not been deprived
21 of jurisdiction" over this action. Therefore this action shall
22 proceed in spite of the filing of a purported notice of appeal
23 from the Magistrate Judge's findings and recommendations.

24 In accordance with the provisions of 28 U.S.C. § 636
25 (b)(1)(C), this Court has conducted a *de novo* review of the case.
26 Having carefully reviewed the entire file, including the
27 objections, the Court finds that the findings and recommendation
28 are supported by the record and proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendation filed November 14, 2005,
3 are ADOPTED IN FULL, except for a very minor correction in the
4 calculation of the amount of damages; and

5 2. Plaintiff's application for default judgment by the Court
6 IS GRANTED; and

7 3. The Court FINDS that there is no just reason for delay;
8 and

9 4. The Clerk IS DIRECTED to enter final judgment in favor of
10 Plaintiff Jesus Albizu against Defendants Wesley E. Amundson and
11 Amundson and Associates for \$157,800.00 in damages; prejudgment
12 interest at the rate of ten per cent per annum from May 13, 2002;
13 punitive damages in the sum of \$306,000.00; and treble damages in
14 the amount of \$306,000.00; and

15 5. The judgment entered by the Clerk SHALL BE CONSIDERED a
16 final judgment within the meaning of Fed. R. Civ. P. 54(b).

17
18 IT IS SO ORDERED.

19 **Dated: December 23, 2005**
20 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE